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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 BANK OF NEW YORK MELLON,

8 Plaintiff(s),

9 v.

10 HOMEOWNER ASSOCIATION
11 SERVICES, INC., et al.,

12 Defendant(s).

Case No. 2:17-CV-376 JCM (GWF)

ORDER

13 Presently before the court is plaintiff Bank of New York Mellon's ("BNYM") "motion
14 pursuant to order dated April 15, 2019." (ECF No. 29). Defendant Starfire Estates VI Owners
15 Association ("Starfire") and defendant Saticoy Bay LLC ("Saticoy Bay") (collectively
16 "defendants") filed separate responses (ECF Nos. 32 and 33, respectively), to which BNYM
17 replied (ECF No. 34).

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19 On February 7, 2017, plaintiff initiated the present lawsuit against Homeowner Association
20 Services, Inc., Starfire, and Saticoy Bay regarding a real property dispute located at 2708 Stargate
21 Street, Las Vegas, Nevada 89108. (ECF No. 1). Starfire and Saticoy Bay both moved to dismiss
22 BNYM's complaint, and on July 3, 2017, the case was dismissed. (ECF No. 19).

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24 BNYM appealed to the Ninth Circuit. (ECF No. 22). The Ninth Circuit vacated this court's
25 order of dismissal and remanded this case in light of *Bank of America, N.A. v. Arlington West*
26 *Twilight Homeowners Association* ("Arlington") 920 F. 3d 620 (9th Cir. 2019). (ECF No. 25).
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1 In *Arlington*, the Ninth Circuit held that “an HOA must give notice to all junior interest
2 holders regardless of any request.” *Id.* at 624. Furthermore, the court decided “that NRS
3 § 116.3116 *et seq.* is not facially unconstitutional on the basis of an impermissible opt-in notice
4 scheme.” *Id.*

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6 Even though BNYM asserts several arguments in response to the Ninth Circuit’s remand,
7 the crux of the issue is whether, pursuant to *Arlington*, the constitutionality of NRS § 116.3116 *et*
8 *seq.*, as well as the standard for valid tender under the statute, alter this court’s order dismissing
9 BNYM’s complaint.

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11 The court’s July 3, 2017, order does not address the constitutionality of NRS § 116.3116.
12 (ECF No. 19). In that order, claims (2) through (4) of BNYM’s complaint were dismissed
13 without prejudice. *Id.* at 3. First, claims (2) and (3) were dismissed because BNYM failed to
14 mediate pursuant to NRS § 38.310, neither of which are affected by the Court’s holding in
15 *Arlington*. *Id.* at 4. Claim (4) was also dismissed without prejudice because injunctive relief is
16 not a stand-alone claim. *Id.* Again, this decision is not impacted by the court’s ruling in
17 *Arlington*.

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19 BNYM previously argued that the notices it received were deficient. *Id.* at 7. This
20 argument is unavailing in the wake of *Arlington*. Now on remand, BNYM claims that it did not
21 receive notice. (ECF No. 29 at 4). More specifically, BNYM claims to “not have record of
22 receipt of either the operative May 28, 2014, notice of default or February 2, 2015, notice of
23 sale.” *Id.* For this reason, BNYM contends that the sale must be set aside. *Id.*

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25 However, defendants provide ample evidence showing that the required notice was
26 served upon BNYM. Starfire’s exhibits clearly demonstrate that the notice of default was mailed
27 to BNYM on June 3, 2014. (ECF No. 32 at 5). Furthermore, Starfire shows notice of receipt of
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1 such document by BNYM on June 6, 2014. (ECF Nos. 32 at 5; 32-1). Additionally, “the
2 operative notice of sale was mailed to BNYM [on January 28, 2015,] and was delivered on
3 February 2, 2015.” (ECF Nos. 32 at 5; 32-2). Saticoy Bay also referenced these notices in its
4 own response. (ECF No. 33 at 2). Because BNYM was indeed given notice, the court holds that
5 this case should be dismissed. Furthermore, BNYM’s other claims do not address the Ninth
6 Circuit’s decision in *Arlington* and, therefore, does not affect this court’s prior analysis.
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8 The court denies BNYM’s motion.

9 Accordingly,

10 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that BNYM’s motion pursuant
11 to order dated April 15, 2019, (ECF No. 29) be, and the same hereby is, DENIED.
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13 IT IS FURTHER ORDERED that the court’s July 3, 2017, order (ECF No. 19) granting
14 Starfire’s motion to dismiss (ECF No. 8) and Saticoy Bay’s motion to dismiss (ECF No. 10) be,
15 and the same hereby is, REENTERED. BNYM’s complaint (ECF No. 1) is hereby DISMISSED
16 WITHOUT PREJUDICE.
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18 DATED February 28, 2020.

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UNITED STATES DISTRICT JUDGE
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